

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

JOHN DOE, §
Plaintiff, §
v. §
STEPHEN F. AUSTIN STATE §
UNIVERSIT, STEVE §
WESTBROOK, Ed.D. IN HIS §
OFFICIAL CAPACITY §
AS INTERIM PRESIDENT, DR. §
MICHAEL WALKER, INDIVUALLY §
AND DR. PEGGY S. SCOTT, §
INDIVIDUALLY §

Defendants. §

CIVIL ACTION NO. 9:19-cv-00006-KFG
JURY

**PLAINTIFF'S MOTION TO RECONSIDER THE PROVISION OF THE ORDER
GOVERNING PROCEEDINGS RELATING TO
THE DISMISSAL OF CLAIMS OF FICTITIOUS PARTIES [Dkt #13]**

COMES NOW Plaintiff John Doe (Plaintiff) and files this Motion to Reconsider the
Provision of the Order Governing Proceedings Relating to the Dismissal of Claims of Fictitious
Parties [Dkt #13] and in support thereof, Plaintiff shows:

I. FACTS

1. Under the terms of Order Governing Proceedings dated March 6, 2019, [Dkt #13], this court ordered that this action be dismissed as to all fictitious parties without prejudice to the rights of any party to take advantage of the provisions of Federal Rule of Civil Procedure 15(c).¹ By text entry of March 13, 2019, this Court granted leave for Plaintiff to file his Second Amended

¹ ECF 13-6

Complaint brought by Plaintiff under the pseudonym "John Doe". Plaintiff respectfully requests this Court's reconsideration of the provision in its March 6th order dismissing fictitious parties.

2. Plaintiff is a former student at Stephen F. Austin State University. See Plaintiff's Second Amended Complaint (Complaint). [Dkt #15] Plaintiff is a male who, by separate motion, is requesting the Court's permission to proceed under the pseudonym John Doe. Requiring Plaintiff to proceed without the benefit of pseudonym would irreparably damage important privacy interests of the Plaintiff.

3. Plaintiff is seeking permission of the Court to proceed anonymously given the extremely sensitive and private nature of the matters alleged herein and to comply with Stephen F. Austin State University's requirement that disciplinary proceedings be kept confidential. Consistent with the protection Plaintiff seeks for himself, Plaintiff refers to the female complainant in the underlying student disciplinary proceeding as "Jane Roe" and the witnesses the investigative team interviewed as CW# or RW#, as they were identified in the Stephen F. Austin State University Title IX Investigator's Report. All Defendants are fully aware of the actual identities of John Doe, Jane Roe and the witnesses, and will not be prejudiced in any way by use of those pseudonyms for public filings. Upon information and belief, all Defendants will be represented by the Attorney General.

4. Plaintiff requests the Court reconsider and vacate that portion of this Court's Order Governing Proceedings [Dkt #13] that dismissed this action as to all fictitious parties.

CONCLUSION AND PRAYER

Plaintiff respectfully requests that this Court grant his request to vacate that provision of the Order Governing Proceedings relating to the provision dismissing the claims of fictitious parties.

Dated March 25, 2019.

Respectfully submitted,

TATE MOERER & KING, LLP

/s/ Richard L. Tate

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2019, I electronically filed the foregoing with the Clerk of the Court via the CM/ECF system, which will serve a notice of electronic filing to the following:

Ken Paxton
Attorney General of Texas
Benjamin S. Lyles
Assistant Attorney General
General Litigation Division
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ATTORNEYS FOR DEFENDANTS

/s/ Richard L. Tate _____

Richard L. Tate

CERTIFICATE OF CONFERENCE

The undersigned counsel certifies that he has complied with the meet and confer requirement in Local Rule CV-7(h) prior to filing this motion by email with Defendants' counsel the office of the Attorney General on March 22, 2019 and counsel for Defendants advised him that the Defendants take no position on this Motion to Reconsider; therefore, the discussion has ended in an impasse, leaving an open issue for the court to resolve.

/s/ Richard L. Tate _____

Richard L. Tate